Judge: Hon. Marc L. Barreca
Chapter: 7
Hearing Date: May 27, 2011
Hearing Time: 9:30 a.m.
Hearing Site: 700 Stewart St., #7106
Seattle, WA 98101
Response Date: May 20, 2011

UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re: ADAM GROSSMAN, Debtor.	Case No. 10-19817 TRUSTEE'S OBJECTION TO APPLICATION FOR COMPENSATION OF TSAI LAW GROUP, SPECIAL COUNSEL TO THE DEBTOR

Ronald G. Brown, the Chapter 7 Trustee objects to the Application for Compensation of Tsai Law Group, Special Counsel to the Debtor ("Tsai Fee Application") as set forth below.

The trustee is very troubled by facts he has unearthed relating to the Tsai Fee Application. It appears that the order authorizing the employment of the Tsai law firm was entered based on false representations made to the Court. After the Tsai law firm was employed, it failed to make two required Bankruptcy 2016 disclosures regarding payments it received. The blatant second and third failures of the Tsai firm to comply with Bankruptcy Rule 2016 should sound the death-knell for their application for compensation and reimbursement of expenses. The Trustee requests that the Court deny the application for compensation in its entirety and order the Tsai law firm to turn over to the Trustee all funds it is holding.

This is a nasty case. This debtor does not comply with Court orders, and generally does whatever the debtor feels like doing, regardless of the pendency of the bankruptcy.

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For example the debtor has transferred all of his real property, post appointment of the Chapter 11 trustee, for no consideration. See Exhibit "1", "2" and "3" to the Declaration of Denice Moewes filed simultaneously herewith ("Moewes Declaration").

There was a court order entered by Judge Steiner on November 16, 2010 (docket #64) that reads in part as follows, which requires the debtor to provide information, which as of today has not been complied with (i.e. the information has not been produced):

ORDERED as follows:

1. The motion for the appointment of a trustee is continued to December 3, 2010, at 9:30 o'clock A. M.

2. At least forty-eight hours prior to the continued hearing, the debtor will serve and file the following:

a. Responses to all of the fifteen requests for information made by the office of the U.S. Trustee.

b. A statement as to what happened to the $718,186 transferred out of various accounts between September 11, 2009, and October 1, 2010; the statement to include the dates of all transfers, the name and address of each transferee, the amount so transferred to each, and the reason for each such transfer.

c. All documents pertaining to or relating to the property in Redding, California.

d. The names and addresses of any and all partners and/or members of the debtor's various business enterprises and the Tax ID Numbers of each.

e. A list of all bank accounts maintained by the debtor within the past two years, the status of each such account on the day this bankruptcy was filed (amount on deposit), and the amounts of any and all funds withdrawn or transferred from these accounts post filing, the dates of the withdrawals and/or transfers, and the names and addresses of the recipients of the withdrawals or transfers.

f. The Form 26 for each of the debtor's business enterprises.

The debtor has not filed his post-conversion schedules and failed to attend his first scheduled, post-conversion, section 341 meeting, failed to attend his continued section

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341 meeting and probably only attended the second continued 341 meeting because Martin Smith advised the debtor's counsel and the conclusion of the first continued section 341 meeting that if his client did not appear at the second continued section 341 meeting a motion would be filed to have the U.S. Marshals pick up the debtor and bring him to said meeting.   Moewes Declaration

In any case it is important for the attorneys to comply with rules. In a case such as this one where the debtor runs amok and afoul of virtually every Bankruptcy Code provision it is imperative that the lawyers strictly comply with the rules, especially those requiring disclosure of compensation. This is even more compelling when there has been $718,186 transferred out of accounts controlled by the debtor both prior to and after the Petition Date as noted by Judge Steiner in paragraph 2(b) of the November 16, 2010 order.   The Tsai law firm has failed fulfilling its disclosure obligations and it gives a very negative perception in light of the many bad acts of this debtor.

I. FACTUAL BACKGROUND

1. The debtor filed a voluntary chapter 11 bankruptcy petition on June 25, 2010 which was assigned case number 10-17334.   The debtor did not file schedules and accordingly the case was dismissed on July 22, 2010 (docket #24).

2. The debtor filed a voluntary chapter 11 bankruptcy petition on July 27, 2010 which was assigned case number 10-18671.   The debtor did not meet the minimal filing requirements and this case too was dismissed, on August 10, 2010 (docket #24).

3. The debtor filed this current bankruptcy proceeding as a voluntary chapter 11 bankruptcy petition on August 19, 2010 ("Current Bankruptcy"). Because of the two prior dismissed bankruptcy cases the automatic stay was not in effect in relation to this case.

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4. The debtor was at all times during 2010 engaged in a very contentious divorce with his ex-wife which was pending in King County Superior Court. The filing of the Current Bankruptcy did not stay the divorce action as it had in the previous two cases.

5. The section 341 meeting was held on September 28, 2010. A review of the transcript evidences that it was a very tense and contentious 341 meeting. See docket #35 which has the transcript attached. During the section 341 meeting it was disclosed that the debtor had retained and paid, post-petition, special counsel to represent him in counsel in his state court case and was paying said counsel. The debtor testified that the Tsai Law Group had been paid $7,500.00. Bill Courshon indicated that an application to employ said counsel needed to be filed immediately. See docket #35, transcript of section 341 meeting, page 28 lines 35-47, all of page 29 and page 30, lines 1-6. Mr. Courshon also made it crystal clear that the debtor could not borrow funds without court approval. Docket #35, page3, lines 20-43 and page 4, lines 1-45.

6. Despite being told that a motion to employ needed to be filed immediately, the debtor did not file the motion until more than five weeks later on November 4, 2010 (docket #42), and 2 weeks after a creditor had filed a motion against the Tsai law group for disgorgement of fees. (docket #32). (The motion to employ the Tsai law firm was on shortened time. The debtor seeks to shorten time on virtually every pleading he files).

7. The declaration of Emily Tsai filed in support of the motion to employ (docket #43) states in paragraph six: "[y]our declarant certifies that she has read Local Rule 2016 which sets forth the requirements for an application for compensation and reimbursement."

8. The motion to employ the Tsai law firm (docket #42) states in paragraph 5, 6, 7 and 11 as follows:

> 5. On September 16, 2010, $7,500.00 was paid by Peter Hendrickson to the Tsai Law Company, PLLC on Applicant's behalf.

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6. On October 11, 2010, $20,000.00 was paid by Lyman Opie to the Tsai Law Company, PLLC on Applicant's behalf.

7. Neither of these two payments were made with any strings attached.

11. In other words, no assets of the estate have been used for employment of the Tsai Law Company, PLLC.

9. The statements contained in the motion as to Lyman Opie appear to be false. Mr. Opie lent the debtor $20,000.00 of funds post-petition and these funds were not a gift, they were a loan as was explained in a letter to Denice Moewes from Hugh McCullough, Mr. Opio's attorney. The debtor, post-petition, secured the loan from Mr. Opie by granting Mr. Opie a deed of trust against real property in Cottonwood, California, property that is property of this bankruptcy estate. Moewes Declaration, Exhibit "__".

10. The Court did not order disgorgement of the Tsai Law Group retainer (docket #63) and instead authorized its employment nunc pro tunc, clearly based on representations made to the Court in the Motion to employ.

11. The Tsai Law Group filed its application for compensation and reimbursement of expenses on April 25, 2011. In that application it is disclosed, for the first time, that The Tsai law firm received an additional payment of $9,500.00 on January 28, 2011 and $20,000.00 on February 2, 2011 from a friend and relative of the debtor, respectively.

II. ARGUMENT

Section 329(a) provides:

Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

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11 U.S.C. 329. To implement Section 329(a), Rule 2016(b) provides:
(b) Disclosure of compensation paid or promised to attorney for debtor

Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed.

Rule 2016(b) is not tricky, it is not complicated, and it is not murky. Any party representing the debtor who receives payments that were not disclosed in the original application is required to file a supplemental statement with the U.S. Trustee within 14 days of receiving such additional payments. The checks are not attached to the motion. Nonetheless, the declarations of the two lenders are attached and are dated January 28, 2011 and February 22, 2011, so the supplemental statement was due to the US Trustee no later than March 14 and March 16, 2011. Nothing was filed by the Tsai Law Group.

This is not the first instance of outright disregard for Rule 2016. The Tsai Law Group received three separate transfers of funds totaling $32,500.00 before it ever bothered to even get employed. At no time after receiving the three transfers did the Tsai Law Group advise the US Trustee that it had received said transfers. The Tsai Law Group in its motion to employ did not state it was unaware of the requirements of Rule 2016(b) but merely stated it was too busy to get employed as it was getting ready to go to trial. Thus we have now a total five separate transfers, all of which were subject to Rule 2016(b) disclosures, and in not one instance did the Tsai Law Group comply with the rule. Given the fact that Emily Tsai signed a declaration indicating she had read Rule 2016(b) the failure to comply with the disclosures in relation to the last two transfers appears constitute willful disregard as to compliance with Rule 2016(b) either because the Tsai Law Group

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has no regard for the Bankruptcy Court or because the Debtor did not want the Court to know about these additional transfers and the Tsai Law Group was willing to assist the debtor in hiding this fact.

An attorney's failure to comply with Section 329(a) is grounds for complete disgorgement of any fees received in a case. *In re Lewis*, 113, F.3d 1040, 1045 (9th Cir. 1997) ("An attorney's failure to obey the disclosure and reporting requirements of the Bankruptcy Code and Rules gives the bankruptcy court the discretion to order disgorgement of attorney's fees.") and may even result in sanctions "regardless of actual harm to the estate." *In re Park-Helena Corp.*, 63 F.3d at 881. Disgorgement for nondisclosure is appropriate "irrespective of the payment's source," *In re Lewis*, 113 F.3d at 1046. In re Downs, 103 F.3d 472, 479 (6th Cir. 1996) (Stating that a bankruptcy court "should deny all compensation to an attorney who exhibits willful disregard" to Section 329 and Rule 2016).

The Trustee further takes exception with the huge chunks of time descriptions that have been blacked out of the bills. The order authorizing the employment of the Tsai Law Firm did not exempt them from following Bankruptcy Rule 330.

Finally, the bottom of page 16 to the Declaration of Emily Tsai in support of the application for compensation and reimbursement of expenses (docket #151) indicates that the January bill attached is an amended bill. The Trustee is entitled to see the original bill so he can see what is being amended.

III. CONCLUSION

The Trustee requests that the Court deny the application for compensation in its entirety and order the Tsai law firm to turn over all funds it is holding to the Trustee.

Dated this 20th day of May, 2011.

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/s/ Denice E. Moewes

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